



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4327-98

27 March 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you were evaluated by a medical board on 24 March 1993, and given diagnoses of neck pain and left shoulder pain, nonspecific, and low back pain. Examination disclosed limitation of motion in your spine, as well as minimal symptoms of radiculopathy. Radiographs of the lumbar and cervical spines were unremarkable. You were counseled regarding the possibility of further work-up, including MRI examination, for potential diagnosis of a cervical disc problem, but you declined further evaluation. As treatment had been unsuccessful in returning you to full duty, and as you were unable to perform physical training, the medical board recommended that your case be referred to the Physical Evaluation Board (PEB). On 18 May 1993, the PEB made preliminary findings that you were unfit for duty because of the conditions diagnosed by the medical board, which it rated together under code VA code 5099-5003, at 10%. You accepted those findings on 8 June 1993, and were discharged with entitlement to disability severance pay on 26 August 1993. On 12 January 1995, the Department of Veterans Affairs (VA) rated your cervical spine condition at 20% under VA code 5293, as intervertebral disc disease. It rated your lower back condition at 20% under VA code 5292, for moderate limitation of motion of your

lumbar spine.

The Board noted that although you experienced minimal symptoms of radiculopathy from your cervical spine, as well as limitation of motion in lumbar your spine, you were found unfit for duty because of back pain, rather than a neurological deficit or limitation of motion. The Board was not persuaded that your cervical spine condition met the criteria for a rating under the code applicable to intervertebral disc disease, or that the limitation of motion of your lumbar spine was unfitting. Accordingly, and in view of paucity of objective physical findings in your case, the Board concluded your spinal conditions were appropriately rated together under VA code 5099-5003, by analogy to osteoarthritis.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director